

1. DEFINITIONS

(a) The term "head of the department" as used herein shall mean the head or any assistant head of the executive department or independent establishment involved, and the term "his duly authorized representative" shall mean any person authorized to act for him other than the Contracting Officer.

(b) The term "Contracting Officer" as used herein, shall include his duly appointed successor or his authorized representative.

2. SPECIFICATIONS AND DRAWINGS

The Contractor shall keep on the work a copy of the drawings and specifications and shall at all times give the Contracting Officer access thereto. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both. In case of difference between drawings and specifications, the specifications shall govern. In any case of discrepancy either in the figures, in the drawings, or in the specifications, the matter shall be promptly submitted to the Contracting Officer, who shall promptly make a determination in writing. Any adjustment by the Contractor without this determination shall be at his own risk and expense. The Contracting Officer shall furnish from time to time such detail drawings and other information as he may consider necessary, unless otherwise provided.

3. CHANGES

The Contracting Officer may at any time, by a written order, and without notice to the sureties, make changes in the drawings and/or specifications of this contract and within the general scope thereof. If such changes cause an increase or decrease in the amount due under this contract, or in the time required for its performance, an equitable adjustment shall be made and the contract shall be modified in writing accordingly. Any claim of the Contractor for adjustment under this clause must be asserted in writing within 30 days from the date of receipt by the Contractor of the notification of change: *Provided, however*, That the Contracting Officer, if he determines that the facts justify such action, may receive and consider, and adjust any such claim asserted at any time prior to the date of final settlement of the contract. If the parties fail to agree upon the adjustment to be made the dispute shall be determined as provided in Clause 6 hereof. But nothing provided in this clause shall excuse the Contractor from proceeding with the prosecution of the work as changed. Except as otherwise herein provided, no charge for any extra work or material will be allowed.

4. CHANGED CONDITIONS

The Contractor shall promptly, and before such conditions are disturbed, notify the Contracting Officer in writing of: (1) subsurface or latent physical conditions at the site differing materially from those indicated in this contract, or (2) unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in this contract. The Contracting Officer shall promptly investigate the conditions, and if he finds that such conditions do so materially differ and cause an increase or decrease in the cost of, or the time required for, performance of this contract, an equitable adjustment shall be made and the contract modified in writing accordingly. Any claim of the Contractor for adjustment hereunder shall not be allowed unless he has given notice as above required; provided that the Contracting Officer may, if he determines the facts so justify, consider and adjust any such claim asserted before the date of final settlement of the contract. If the parties fail to agree upon the adjustment to be made, the dispute shall be determined as provided in Clause 6 hereof.

5. TERMINATION FOR DEFAULT—DAMAGES FOR DELAY—TIME EXTENSIONS

(a) If the Contractor refuses or fails to prosecute the work, or any separable part thereof, with such diligence as will insure its completion within the time specified in this contract, or any extension thereof, or fails to complete said work within such time, the Government may, by written notice to the Contractor, terminate his right to proceed with the work or such part of the work as to which there has been delay. In such event the Government may take over the work and prosecute the same to completion, by contract or otherwise, and the Contractor and his sureties shall be liable to the Government for any excess cost occasioned the Government thereby, and for liquidated damages for delay, as fixed in the specifications or accompanying papers, until such reasonable time as may be required for the final completion of the work, or if liquidated damages are not so fixed, any actual damages occasioned by such delay. If the Contractor's right to proceed is so terminated, the Government may take possession of and utilize in completing the work such materials, appliances, and plant as may be on the site of the work and necessary therefor.

(b) If the Government does not terminate the right of the Contractor to proceed, as provided in paragraph (a) hereof, the Contractor shall continue the work, in which event he and his sureties shall be liable to the Government, in the amount set forth in the specifications or accompanying papers, for fixed, agreed, and liquidated damages for each calendar day of delay until the work is completed or accepted, or if liquidated damages are not so fixed, any actual damages occasioned by such delay.

(c) The right of the Contractor to proceed shall not be terminated, as provided in paragraph (a) hereof, nor the Contractor charged with liquidated or actual damages, as provided in paragraph (b) hereof because of any delays in the completion of the work due to unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including, but not restricted to, acts of God, or of the public enemy, acts of the Government, in either its sovereign or contractual capacity, acts of another contractor in the performance of a contract with the Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather, or delays of subcontractors or suppliers due to such causes: *Provided*, That the Contractor shall within 10 days from the beginning of any such delay, unless the Contracting Officer shall grant a further period of time prior to the date of final settlement of the contract, notify the Contracting Officer in writing of the causes of delay. The Contracting Officer shall ascertain the facts and the extent of the delay and extend the time for completing the work when in his judgment the findings of fact justify such an extension, and his findings of fact thereon shall be final and conclusive on the parties hereto, subject only to appeal as provided in Clause 6 hereof.

6. DISPUTES

Except as otherwise provided in this contract, any dispute concerning a question of fact arising under this contract which is not disposed of by agreement shall be decided by the Contracting Officer, who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to the Contractor. Within 30 days from the date of receipt of such copy, the Contractor may appeal by mailing or otherwise furnishing to the Contracting Officer a written appeal addressed to the head of the department, and the decision of the head of the department or his duly authorized representatives for the hearings of such appeals shall, unless determined by a court of competent jurisdiction to have been fraudulent, arbitrary, capricious, or so grossly erroneous as necessarily to imply bad faith, be final and conclusive. Any appeal shall be filed with the appeal to the head of the department.

of the department is taken, the decision of the Contracting Officer shall be final and conclusive. In connection with any appeal proceeding under this clause, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of the contract and in accordance with the Contracting Officer's decision.

7. PAYMENTS TO CONTRACTORS

(a) Unless otherwise provided in the specifications, partial payments will be made as the work progresses at the end of each calendar month, or as soon thereafter as practicable, or at more frequent intervals as determined by the Contracting Officer, on estimates made and approved by the Contracting Officer. In preparing estimates the material delivered on the site and preparatory work done may be taken into consideration.

(b) In making such partial payments there shall be retained 10 percent on the estimated amount until final completion and acceptance of all work covered by the contract: *Provided, however, That the Contracting Officer, at any time after 50 percent of the work has been completed, if he finds that satisfactory progress is being made, may make any of the remaining partial payments in full: And provided further, That on completion and acceptance of each separate building, public work, or other division of the contract, on which the price is stated separately in the contract, payment may be made in full, including retained percentage thereon, less authorized deductions.*

(c) All material and work covered by partial payments made shall thereupon become the sole property of the Government, but this provision shall not be construed as relieving the Contractor from the sole responsibility for all materials and work upon which payments have been made or the restoration of any damaged work, or as a waiver of the right of the Government to require the fulfillment of all of the terms of the contract.

(d) Upon completion and acceptance of all work required hereunder, the amount due the Contractor under this contract will be paid upon the presentation of a properly executed and duly certified voucher therefor, after the Contractor shall have furnished the Government with a release, if required, of all claims against the Government arising under and by virtue of this contract, other than such claims, if any, as may be specifically excepted by the Contractor from the operation of the release in stated amounts to be set forth therein. If the Contractor's claim to amounts payable under the contract has been assigned under the Assignment of Claims Act of 1940, as amended (41 U. S. C. 15), a release may also be required of the assignee at the option of the Contracting Officer.

8. MATERIALS AND WORKMANSHIP

Unless otherwise specifically provided for in the specifications, all equipment, materials, and articles incorporated in the work covered by this contract are to be new and of the most suitable grade of their respective kinds for the purpose and all workmanship shall be first class. Where equipment, materials, or articles are referred to in the specifications as "equal to" any particular standard, the Contracting Officer shall decide the question of equality. The Contractor shall furnish to the Contracting Officer for his approval the name of the manufacturer of machinery, mechanical and other equipment which he contemplates incorporating in the work, together with their performance capacities and other pertinent information. When required by the specifications, or when called for by the Contracting Officer, the Contractor shall furnish the Contracting Officer for approval full information concerning the materials or articles which he contemplates incorporating in the work. Samples of materials shall be submitted for approval when so directed. Machinery, equipment, materials, and articles installed or used without such approval shall be at the risk of subsequent rejection. The Contracting Officer may

in writing require the Contractor to remove from the work such employee as the Contracting Officer deems incompetent, careless, insubordinate, or otherwise objectionable, or whose continued employment on the work is deemed by the Contracting Officer to be contrary to the public interest.

9. INSPECTION

(a) Except as otherwise provided in paragraph (d) hereof all material and workmanship, if not otherwise designated by the specifications, shall be subject to inspection, examination, and test by the Contracting Officer at any and all times during manufacture and/or construction and at any and all places where such manufacture and/or construction are carried on. The Government shall have the right to reject defective material and workmanship or require its correction. Rejected workmanship shall be satisfactorily corrected and rejected material shall be satisfactorily replaced with proper material without charge therefor, and the Contractor shall promptly segregate and remove the rejected material from the premises. If the Contractor fails to proceed at once with the replacement of rejected material and/or the correction of defective workmanship the Government may, by contract or otherwise, replace such material and/or correct such workmanship and charge the cost thereof to the Contractor, or may terminate the right of the Contractor to proceed as provided in Clause 5 of this contract, the Contractor and surety being liable for any damage to the same extent as provided in said Clause 5 for terminations thereunder.

(b) The Contractor shall furnish promptly without additional charge, all reasonable facilities, labor, and materials necessary for the safe and convenient inspection and test that may be required by the Contracting Officer. All inspection and tests by the Government shall be performed in such manner as not unnecessarily to delay the work. Special, full size, and performance tests shall be as described in the specifications. The Contractor shall be charged with any additional cost of inspection when material and workmanship are not ready at the time inspection is requested by the Contractor.

(c) Should it be considered necessary or advisable by the Government at any time before final acceptance of the entire work to make an examination of work already completed, by removing or tearing out same, the Contractor shall on request promptly furnish all necessary facilities, labor, and material. If such work is found to be defective or nonconforming in any material respect, due to fault of the Contractor or his subcontractors, he shall defray all the expenses of such examination and of satisfactory reconstruction. If, however, such work is found to meet the requirements of the contract, the actual direct cost of labor and material necessarily involved in the examination and replacement, plus 15 percent, shall be allowed the Contractor and he shall, in addition, if completion of the work has been delayed thereby, be granted a suitable extension of time on account of the additional work involved.

(d) Inspection of material and finished articles to be incorporated in the work at the site shall be made at the place of production, manufacture, or shipment, whenever the quantity justifies it, unless otherwise stated in the specifications; and such inspection and written or other formal acceptance, unless otherwise stated in the specifications, shall be final, except as regards latent defects, departures from specific requirements of the contract, damage or loss in transit, fraud, or such gross mistakes as amount to fraud. Subject to the requirements contained in the preceding sentence, the inspection of material and workmanship for final acceptance as a whole or in part shall be made at the site. Nothing contained in this paragraph (d) shall in any way restrict the Government's rights under any warranty or guarantee.

10. SUPERINTENDENCE BY CONTRACTOR

The Contractor shall give his personal superintendence to the work or have a competent foreman or superintendent, satisfactory to the Contracting Officer, on the work at all times during progress, with authority to act for him.

11. PERMITS AND RESPONSIBILITY FOR WORK, ETC.

The Contractor shall, without additional expense to the Government, obtain all licenses and permits required for the prosecution of the work. He shall be responsible for all damages to persons or property that occur as a result of his fault or negligence in connection with the prosecution of the work. He shall also be responsible for all materials delivered and work performed until completion and final acceptance, except for any completed unit thereof which theretofore may have been finally accepted.

12. OTHER CONTRACTS

The Government may undertake or award other contracts for additional work, and the Contractor shall fully cooperate with such other contractors and Government employees and carefully fit his own work to such additional work as may be directed by the Contracting Officer. The Contractor shall not commit or permit any act which will interfere with the performance of work by any other contractor or by Government employees.

13. PATENT INDEMNITY

Except as otherwise provided, the Contractor agrees to indemnify the Government and its officers, agents and employees against liability, including costs and expenses, for infringement upon any Letters Patent of the United States (except Letters Patent issued upon an application which is now or may hereafter be, for reasons of national security, ordered by the Government to be kept secret or otherwise withheld from issue) arising out of the performance of this contract or out of the use or disposal by or for the account of the Government of supplies furnished or construction work performed hereunder.

14. ADDITIONAL BOND SECURITY

If any surety upon any bond furnished in connection with this contract becomes unacceptable to the Government, or if any such surety fails to furnish reports as to his financial condition from time to time as requested by the Government, the Contractor shall promptly furnish such additional security as may be required from time to time to protect the interests of the Government and of persons supplying labor or materials in the prosecution of the work contemplated by this contract.

15. COVENANT AGAINST CONTINGENT FEES

The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty the Government shall have the right to annul this contract without liability or in its discretion to deduct from the contract price or consideration the full amount of such commission, percentage, brokerage, or contingent fee.

16. OFFICIALS NOT TO BENEFIT

No member of or Delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

17. BUY AMERICAN ACT

The Contractor agrees that in the performance of the work under this contract the Contractor, subcontractors, material men and suppliers shall use only such unmanufactured articles, materials and supplies (which term "articles, materials and supplies" is hereinafter referred to in this clause as "Supplies") as have been mined or produced in the United States, and only such manufactured supplies as have been manufactured in the United States substantially all from supplies mined, produced, or manufactured, as the case may be, in the United States. Pursuant to the Buy American Act (41 U. S. C. 10a-d), the

foregoing provisions shall not apply (i) with respect to supplies excepted by the head of the department from the application of that Act, (ii) with respect to supplies for use outside the United States, or (iii) with respect to the supplies to be used in the performance of work under this contract which are of a class or kind determined by the head of the department or his duly authorized representative not to be mined, produced, or manufactured, as the case may be, in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality, or (iv) with respect to such supplies, from which the supplies to be used in the performance of work under this contract are manufactured, as are of a class or kind determined by the head of the department or his duly authorized representative not to be mined, produced, or manufactured, as the case may be, in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality, provided that this exception (iv) shall not permit the use in the performance of work under this contract of supplies manufactured outside the United States if such supplies are manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality.

18. CONVICT LABOR

In connection with the performance of work under this contract, the Contractor agrees not to employ any person undergoing sentence of imprisonment at hard labor.

19. NONDISCRIMINATION IN EMPLOYMENT

In connection with the performance of work under this contract, the Contractor agrees not to discriminate against any employee or applicant for employment because of race, creed, color, or national origin; and further agrees to insert the foregoing provision in all subcontracts hereunder except subcontracts for standard commercial supplies or for raw materials.

20. DAVIS-BACON ACT (40 U. S. C. 276a-a(7))

(a) All mechanics and laborers employed or working directly upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by the Copeland Act (Anti-Kickback) Regulations (29 CFR, Part 3)) the full amounts due at time of payment, computed at wage rates not less than those contained in the wage determination decision of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor or subcontractor and such laborers and mechanics; and a copy of the wage determination decision shall be kept posted by the Contractor at the site of the work in a prominent place where it can be easily seen by the workers.

(b) In the event it is found by the Contracting Officer that any laborer or mechanic employed by the Contractor or any subcontractor directly on the site of the work covered by this contract has been or is being paid at a rate of wages less than the rate of wages required by paragraph (a) of this clause, the Contracting Officer may (1) by written notice to the Government Prime Contractor terminate his right to proceed with the work, or such part of the work as to which there has been a failure to pay said required wages, and (2) prosecute the work to completion by contract or otherwise, whereupon such Contractor and his sureties shall be liable to the Government for any excess costs occasioned the Government thereby.

(c) Paragraphs (a) and (b) of this clause shall apply to this contract to the extent that it is (1) a prime contract with the Government subject to the Davis-Bacon Act or (2) a subcontract under such prime contract.

21. EIGHT-HOUR LAWS—OVERTIME COMPENSATION

No laborer or mechanic doing any part of the work contemplated by this contract, in the employ of the Contractor

or any subcontractor contracting for any part of said work contemplated, shall be required or permitted to work more than eight hours in any one calendar day upon such work, except upon the condition that compensation is paid to such laborer or mechanic in accordance with the provisions of this clause. The wages of every laborer and mechanic employed by the Contractor or any subcontractor engaged in the performance of this contract shall be computed on a basic day rate of eight hours per day and work in excess of eight hours per day is permitted only upon the condition that every such laborer and mechanic shall be compensated for all hours worked in excess of eight hours per day at not less than one and one-half times the basic rate of pay. For each violation of the requirements of this clause a penalty of five dollars shall be imposed for each laborer or mechanic for every calendar day in which such employee is required or permitted to labor more than eight hours upon said work without receiving compensation computed in accordance with this clause, and all penalties thus imposed shall be withheld for the use and benefit of the Government: *Provided*, That this stipulation shall be subject in all respects to the exceptions and provisions of the Eight-Hour Laws as set forth in 40 U. S. C. 321, 324, 325, 325a, and 326, which relate to hours of labor and compensation for overtime.

22. APPRENTICES

Apprentices will be permitted to work only under a bona fide apprenticeship program registered with a State Apprenticeship Council which is recognized by the Federal Committee on Apprenticeship, U. S. Department of Labor; or if no such recognized Council exists in a State, under a program registered with the Bureau of Apprenticeship, U. S. Department of Labor.

23. PAYROLL RECORDS AND PAYROLLS

(a) Payroll records will be maintained during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records will contain the name and address of each such employee, his correct classification, rate of pay, daily and weekly number of hours worked, deductions made and actual wages paid. The Contractor will make his employment records available for inspection by authorized representatives of the Contracting Officer and the U. S. Department of Labor, and will permit such representatives to interview employees during working hours on the job.

(b) A certified copy of all payrolls will be submitted weekly to the Contracting Officer. The Government Prime Contractor will be responsible for the submission of certified copies of the payrolls of all subcontractors. The certification will affirm that the payrolls are correct and complete, that the wage rates contained therein are not less than the applicable rates contained in the wage determination decision of the Secretary of Labor attached to this contract, and that the classifications set forth for each laborer or mechanic conform with the work he performed.

24. COPELAND (ANTI-KICKBACK) ACT—NONREBATE OF WAGES.

The regulations of the Secretary of Labor applicable to Contractors and subcontractors (29 CFR, Part 3), made pursuant to the Copeland Act, as amended (40 U. S. C. 276c) and to aid in the enforcement of the Anti-Kickback Act (18 U. S. C. 874) are made a part of this contract by reference. The Contractor will comply with these regulations and any amendments or modifications thereof and the Government Prime Contractor will be responsible for the submission of affidavits required of subcontractors thereunder. The foregoing shall apply except as the Secretary of Labor may specifically provide for reasonable limitations, variations, tolerances, and exemptions.

25. WITHHOLDING OF FUNDS TO ASSURE WAGE PAYMENT

There may be withheld from the Contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics employed by the Contractor or any subcontractor the full amount of wages required by this contract. In the event of failure to pay any laborer or mechanic all or part of the wages required by this contract, the Contracting Officer may take such action as may be necessary to cause the suspension, until such violations have ceased, of any further payment, advance, or guarantee of funds to or for the Government Prime Contractor.

26. SUBCONTRACTS—TERMINATION

The Contractor agrees to insert Clauses 20 through 26 hereof in all subcontracts and further agrees that a breach of any of the requirements of these clauses may be grounds for termination of this contract. The term "Contractor" as used in such clauses in any subcontract shall be deemed to refer to the subcontractor except in the phrase "Government Prime Contractor."